

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

In re: John Deaton, et. al.

JOHN DEATON,
JORDAN DEATON,
JAMES LAMONTE,
TYLER LAMONTE,
MYA LAMONTE,
MITCHELL MCKENNA,
KRISTIANA WARNER,
and all others similarly situated,

Petitioners,

V.

ELAD ROISMAN AS ACTING SEC CHAIRMAN,
U.S. SECURITIES & EXCHANGE COMMISSION

Respondents.

Case No.:

PETITION FOR WRIT OF
MANDAMOUS

STATEMENT OF FACTS

1. The U.S. Securities & Exchange Commission’s (SEC) mission statement is to “protect investors, promote fairness and *share information* about companies...to help investors make informed decisions and invest with confidence.”

2. As chairman of the SEC, it was Jay Clayton's (Clayton) fiduciary duty to enforce the SEC mission statement. Instead of protecting investors and sharing information to help investors make informed decisions the Respondent knowingly and intentionally caused multi-billion-dollar losses to innocent investors who have purchased, exchanged, received and/or acquired the Digital Asset XRP, including the named Petitioners, and all others similarly situated.

3. On December 22, 2020, SEVEN years after the Digital Asset XRP was introduced to the public for sale, establishing itself as the third largest cryptocurrency in the world, at the direction of Clayton, with improper motive and the specific intent to cause irreparable harm, the SEC filed an enforcement action against Ripple Labs (Ripple), its CEO Brad Garlinghouse (Garlinghouse), and Co-founder Chris Larsen (Larsen), alleging that “from 2013 **to the present**”, Ripple has and continues to sell unregistered securities with the Digital Asset XRP. (emphasis added).

4. XRP is the third largest virtual currency with billions of dollars trading every day. XRP trades on exchanges in line with the two largest cryptocurrencies, Bitcoin (BTC) and Ethereum (ETH).

5. The SEC has previously deemed BTC and ETH as non-securities.

6. XRP, according to Ripple, is used as a currency by as many as 150 third-party consumers and commercial applications.

7. Prior to the enforcement action, XRP was the third largest Cryptocurrency in the World. It has been traded openly on over two hundred exchanges globally since 2013. It has been actively traded in the United States during that time on popular exchanges like Coinbase, Kraken, Binance, Voyager, Crypto.com, Uphold, and etc.

8. The Head of Asset Management of Sygnum, a Swiss bank in Singapore, authored an article to the public recommending everyone *increase exposure to “the tokens of the future”* and lists those tokens to be *BTC, ETH, and XRP*. Sygnum classifies BTC as the future asset for store of value and wealth. It classified ETH as an infrastructure play of the future. It classified XRP as not a security, but as technology of the future regarding *payments*.

9. Bitcoin, Cryptocurrencies, Decentralized Finance (DeFi) and Central Bank Digital Currencies (CBDCs) have been the most discussed issues in global finance and money during the last three years.

10. For global governments, after addressing the need for financial relief caused by the Covid-19 Pandemic, Digital Currencies and CBDCs, have become the most significant financial topic in the world today.

11. China's President Xi has urged world leaders to support CBDCs. At the recent G20 meeting in November 2020, he stressed the need for CBDCs.

12. Japan accelerated a rollout of the digital Yen and CBDC.

13. Canada announced it will soon launch a CBDC.

14. The Bank of England stated digital currencies may replace banks role in payments altogether.

15. The European Central Bank said that Europe is losing in the CBDC race and that there will be significant consequences.

16. PayPal CEO Dan Shulman recently stated there is "no doubt people flocking to digital currencies and CBDCs *will be the future* and there is no doubt that CBDCs will be issued directly by Central Banks to people".

17. A top Japanese Banker said digital currency development is the top priority and that Japan is behind China and South Korea.

18. The Head of Russian Parliaments for financial markets stated that the Crypto Ruble will start in 2021.

19. China has already created a CB-backed digital currency and has been using it for the last couple of months in select Chinese cities.

20. A Top Russian banker declared global payments giant SWIFT to be replaced by digital currencies.

21. In the last few years, Ripple emerged as the main challenger to SWIFT by offering instant cross border payments, utilizing XRP. Acting Director of the Office of the Comptroller of the Currency (OCC) Brian Brooks publicly stated that the Government should utilize existing private companies like Ripple and its technology to replace the SWIFT system.

22. OCC Brian Brooks stated publicly that in the U.S. there are too many agencies in finance and banking. He openly asks the question “*Do we think it’s best for the Government to build a CBDC or utilize the private sector, which is already built?*” Brian Brooks, without question was discussing XRP and the XRP Ledger (XRPL). There is no doubt it was XRP that he was referencing because he stated that the technology to build a CBDC was “already built”, but that the only issue was with a *lack of regulatory clarity*. He could not have been referencing BTC or ETH because they have long enjoyed regulatory clarity by being declared non-securities by the SEC. Additionally, Brian Brooks has stated that the industry needs to know whether the SEC thinks XRP is a security.

23. Ripple announced that it intends to leverage its payment platform and the XRPL for delivery of CBDCs.

24. Garlinghouse publicly stated that Central Banks are looking to issue CBDCs on the XRPL.

25. Ripple presented a plan to host CBDCs together with the XRP token. The XRPL will host CBDCs and public and private entities are able to modify CBDCs according to their needs.

26. The World Economic Forum (WEF) named XRP as the most relevant crypto for CBDCs by banks.

27. David Schwartz, Ripple's CTO, says that the XRPL will bridge between CBDCs. In short, XRP acts as a *bridge currency* (emphasis added).

28. Former CFTC, Chris Giancarlo, who heads the Digital Dollar Project for the U.S. Government, has stated publicly, in writing, that XRP is not a security.

29. Congressman Tim Emmer has publicly declared that XRP "is clearly not a security."

30. Japan, Singapore, the U.K., Switzerland and the UAE have all declared XRP to be a non-security.

31. XRP is declared a non-security according to Japan's Financial Services Agency.

32. SBI, a Japanese corporation, has an E sports team and pays its players in the Digital Asset XRP. In this instance, XRP is utilized as payroll currency.

33. The UK's Financial Conduct Authority (FCA), unlike the SEC, provides clear guidance to investors and businesses regarding crypto-assets and digital currencies. The FCA has stated that crypto fits into several brackets: a) a security token; b) a utility token; and c) an exchange token. A security token is like a stock certificate or debt instrument. It provides title rights to a company. A utility token is designed for a specific purpose. An exchange token is traded on platforms for value in something. The FCA declared XRP to be a "hybrid token", constituting both a utility and exchange token. It **was not** determined to be a security token.

34. Ripple partner Xago announced they are utilizing XRP to move money across Africa.

35. The Office of Monetary & Financial Institutions Forum (OMFIF) produced a report on blockchain technology and discussed the advantages of XRP as an alternative in payments.

36. Bitex, an exchange in the UAE that offers XRP, is expanding to India with a wallet trading platform utilizing the Crypto Assets BTC, ETH, XRP, LTC and BCH.

37. Deel, partnered with Coinbase (which sells XRP), launches a crypto payroll tool that allows international workers to be paid in BTC, ETH and XRP, allowing near instantaneous withdrawals. In other words, International Workers withdraw their paychecks in XRP - *XRP is used as a substitute for fiat currency.*

38. Japanese financial giant SBI sponsors and/or owns an Esports team. SBI announced it is paying its players not in the Japanese Yen, but in XRP. Like with Deel, XRP is being used *as a substitute to fiat currency.*

39. SBI Ripple Asia CEO publicly stated that the CEO of Japanese Financial giant SBI Holdings is “XRP’s biggest fan and wants the next World’s Fair in Japan to only accept XRP *as a currency payment.*”

40. SBI announced it plans to test XRP in the \$6.6 trillion foreign exchange (Fx) market. The total Fx market, worldwide, is between \$1 to \$7 quadrillion. SBI also rolled out a BTC lending service and announced plans to add support for ETH *and XRP.*

41. Novatti partnered with Ripple to enable real-time remittances between Australia and Asia.

42. Goldman Sachs’ former executive resigned and goes to work for Ripple related to Fx markets. As stated, SBI was testing XRP in the Fx Markets and the Global Fx markets equal \$1-7 Quadrillion.

43. The IMF in its publications lists two digital assets that can be used as a *bridge currency*: XRP and the JPM Coin.

44. In 2015, the DOJ and FinCen categorized XRP as *virtual currency*.

45. Hence, internationally and in the United States, XRP was being described as a *currency, virtual currency or commodity, or utility token*.

46. The Digital Asset XRP and Ripple are well-known to the Respondent and officials in the U.S. Government. In 2015, the U.S. Government entered into a consent agreement over Ripple's sale of XRP to a well-known Bitcoin and Cryptocurrency Advocate and investor, Roger Ver. Ripple paid a fine for this XRP distribution and agreed not to establish a Ripple and/or XRP Wallet.

47. Additionally, in 2015 the DOJ and FinCen settled a case with Ripple. The DOJ and FinCen classified and/or determined that XRP was a "**virtual currency**" and that Ripple is a money transmitter of XRP (emphasis added). The settlement with the U.S. Government required Ripple's XRP transactions to comply with laws **that do not apply to** securities' transactions. However, more than 5 years later, despite one arm of the U.S. Government declaring XRP virtual currency, Clayton and the SEC, through its enforcement action, allege all XRP as securities. The enforcement action is not limited to the XRP sold to Roger Ver or others directly from Ripple, but ALL XRP, including XRP purchased by investors with absolutely no connection to Ripple or its executives.

48. The issue of XRP and its classification as a virtual currency, and/or commodity, and/or security is an issue Clayton, himself, has been asked, repeatedly and publicly, on several occasions. Clayton, at least two years prior to the December 22, 2020 enforcement action declaring XRP a security, was specifically asked about XRP publicly. On one occasion, Clayton

was being interviewed on CNBC and was asked directly if the SEC was going to officially declare XRP a non-security similarly to the SEC declaring the two larger crypto assets, BTC and ETH, non-securities. Clayton only said, **“if it’s a security, we will regulate it.”** The CNBC anchor pushed back at this non-answer and stated to Clayton that there seems to be confusion regarding XRP because the SEC has not officially declared it as a non-security like it has BTC and ETH. Clayton smugly responded, “I hope I just cleared up any confusion by stating **“if it’s a security we will regulate it.”** It should be noted that Clayton was asked about XRP by CNBC during the very time period the SEC now claims Ripple and Garlinghouse were actively and continuously, selling illegal securities (in the form of XRP). Yet, Clayton waited for several more years before filing the enforcement action declaring all XRP as securities.

49. Clayton was asked directly about XRP approximately one year after CNBC’s interview, while attending a Fintech 2019 Event. Ironically, both Garlinghouse and Clayton were guest speakers at the FinTech conference. The topic of discussion was digital currencies and Garlinghouse spoke immediately after Clayton. Again, Clayton was asked about when the SEC would declare XRP a non-security. Clayton responded that the SEC does not comment on specific products (although, the SEC had commented publicly on the specific products of BTC and ETH). Clayton stated that he very much appreciated the XRP issue, but he could not comment.

50. The SEC could have made the claim against XRP in 2017 when the SEC brought ICO (Initial Coin Offering) cases against several companies, alleging that the digital token that was being offered constituted an unregistered security. Two of these cases involved the EOS and KIN Tokens. These companies raised capital by offering ICOs. These tokens were promised by the promoter who received money for that promise. As discussed in the accompanying

Memorandum of Support, this ICO scenario fits squarely in the 4 factor *Howey test* of what constitutes a security. Because these ICOs constituted securities, the SEC shut it down. Ripple and XRP, however, were left alone by the SEC during these high profile ICO prosecutions. In fact, Garlinghouse spoke out against these Token assets. In 2017, XRP had been openly traded for FOUR years.

51. Although the SEC and/or Clayton did not affirmatively declare XRP a non-security similar to ETH and BTC, its actions implied that XRP was in fact not a security. During the time period the SEC **now** claims XRP was an unregistered security, the SEC granted Ripple permission to take a minority stake in the publicly traded company MoneyGram International (MGI). Ripple invested \$50 million purchasing approximately 9% of MGI. *See SEC Complaint, p.58 fn.4*. The SEC approved this purchase of MoneyGram with the full knowledge that Ripple would encourage MGI to use the Digital Asset XRP as a cross-border utility token related to remittances. Hence, The SEC allowed the use of this **so-called illegal security** to be utilized not just by Ripple, but by MoneyGram, as well. The SEC admits to this knowledge when its states that Ripple paid “Money Transmitter significant financial compensation – **often paid in XRP.**” *See SEC Complaint, p. 58 (emphasis added)*.

52. The SEC knew that MGI would sell XRP in the Secondary Markets to investors such as the named Petitioners and all others similarly situated. Hence, it appears, the SEC, believing XRP to be an unregistered security, provided consent for XRP to be purchased and/or utilized by MGI and then sold in secondary markets to innocent investors with no connection to Ripple or even MGI (purchasers of XRP on exchanges do not know the identity of the seller).

53. The OCC, in April 2020, issued a notice to banks in the U.S. that they could custody crypto assets. *Clayton issues a letter that says the SEC agrees with the OCC that U.S.*

banks can now custody cryptocurrency. XRP is the third largest crypto asset. Clayton did not state that he agreed with the OCC with the exception that banks CAN'T custody XRP because they are securities. He never provided a statement that XRP or other Crypto could later be determined a security. **Instead, it appeared that the SEC was in full agreement that Banks could custody Crypto.** *He certainly didn't say but be aware that eight months later, on my way out the door, I intend to declare the third largest crypto asset in the world to be an unregistered security.* No mention of XRP whatsoever. It is one-hundred percent reasonable to assume that if the SEC agrees that US banks can custody crypto assets, it would include the third largest crypto-asset.

54. Considering the magnitude of a SEC enforcement action involving the Digital Asset XRP, Clayton was sent a letter, prior to the filing of the action, from former Chairman of the SEC, Joseph Grundfest warning Clayton that the mere filing of the lawsuit generally declaring XRP an unregistered security “would result in an unprecedented scenario of billions of dollars in losses resulting from an exodus of intermediary market service providers.” Chairman Grundfest pleaded with Clayton stating that “no pressing reason compels immediate enforcement action”. Afterall, XRP has been publicly traded in the United States and globally for SEVEN PLUS years with the SEC’s full awareness and implicit permission. The Respondent was well aware that XRP was being actively traded on over two-hundred exchanges globally, including United States exchanges such as Coinbase, Kraken, Binance US, Voyager, Crypto.com, and Uphold, amongst several others.

55. Clayton was warned by Chairman Grundfest that if the SEC initiated an enforcement action declaring the Digital Asset XRP an unregistered illegal security, in present day, these Digital Asset exchanges would have no choice but to delist XRP and/or halt XRP

trading out of fear that an enforcement action will one day be commenced against them for selling illegal securities. Yet, Clayton was undeterred in his personal mission, contrary to the SEC's mission, and, filed the enforcement action, but not limited to specific distributions of XRP by Ripple's or its executives. Instead, Clayton took the extraordinary and absurd step of declaring all present day XRP, including the XRP owned by the named Petitioners and all others similarly situated, unregistered securities. According to the SEC's Complaint, the XRP held in thousands of individual accounts and or digital wallets belonging to innocent investors who have absolutely no connection to Ripple, or its executives, are securities. In fact, many of these innocent investors, including several of the named Petitioners, and others similarly situated, have never heard of Ripple.

56. Former SEC Chairman Grundfest informed Clayton that he was "aware of no instance in which the simple announcement of a commission's enforcement procedure has, absent allegations of fraud or misrepresentation, caused multi-billion-dollar losses of innocent third parties." In the SEC's Complaint against Ripple, Garlinghouse and Larsen, there are no allegations of fraud or misrepresentation.

57. Clayton chose to file, quite possibly, *the most significant SEC enforcement action in 76 years* as he was walking out the door after allowing the Digital Asset XRP be sold for SEVEN years, leaving a new administration to deal with the aftermath. A different political party is assuming control and it is quite possible, if not likely, that they withdraw and/or amend and limit the Complaint's scope and allegations related to XRP. **Maybe the mere filing of the Complaint was the end game for Clayton.**

58. Prior to the SEC enforcement action, declaring XRP an unregistered security, Clayton had tendered his resignation as chairman of the SEC. He informed the Trump

Administration that he was leaving well before his appointment term expired, and that his last day as chairman would be December 23, 2020. As discussed, BTC, Cryptocurrencies, DeFi, and CBDCs, have exploded and are the most significant developments in Finance and Money since President Richard Nixon removed the United States off the Gold Standard in 1971. The fact that Clayton would direct an enforcement action to be filed; alleging that the third largest cryptocurrency in the world (XRP), was, always has been, and continues to be an unregistered security in the United States; on the day before his last day as chairman of the SEC; with a new administration taking over in less than 30 days; knowing the economic chaos and destruction that would ensue; is puzzling as well as very troubling. It looks bad. It smells bad. And it is bad.

59. Chairman Grundfest, in his letter to Clayton, raised this very issue. He stated, “creating precedent and imposing losses of this sort raises public policy concerns that would benefit from the views of the incoming administration.” Clayton, however, ignored these public policy concerns, and, in spite of a new administration coming into office within less than thirty days; for political and/or personal motivation and, with the specific intent to inflict as much damage as possible against Ripple and the Digital Asset XRP; and, possibly, the entire cryptocurrency industry; on his second to last day in office, while in a position of authority to do so, Jay Clayton filed the **most significant SEC enforcement action in modern history**. These political and/or personal, improper motives are referenced herein and discussed in the accompanying *Memorandum of Support*. But on its face, it challenges reason and common sense to articulate a proper motive to file an action of this magnitude, against the third largest cryptocurrency, after SEVEN years of allowance, the day before you leave office, knowing a new administration would be taking over in less than four weeks.

60. This appearance of improper motive was not lost on former SEC Chairman Grundfest. He informed Clayton that XRP, as the third largest crypto-asset, should not receive different treatment from the SEC than the 2nd largest crypto-asset, Ethereum (ETH), was receiving. Chairman Grundfest informed Clayton that “XRP and ETH should be subject to the same treatment given that the SEC hasn’t illustrated a ‘material distinction’ between the operations of ETH and XRP that is relevant to the application of federal security laws.” In fact, this former SEC Chairman, himself, openly questioned Clayton’s motives. Chairman Grundfest stated that the SEC “imposing security law obligations on XRP while leaving ETH untouched raises fundamental fairness questions **about the exercise of commission discretion.**” (emphasis added).

61. Despite the dire warnings by Chairman Grundfest and knowing very well that the filing of an enforcement action declaring XRP an unregistered security would cause innocent investors with absolutely no connection to Ripple or its executives to lose billions of dollars, the Respondent filed the enforcement action. Strikingly, they did not limit the claim (as they did in other token cases) to specific distributions of XRP directly from the Respondent. Instead, the SEC declared all XRP, including the XRP owned by the Petitioners and all others similarly situated as securities. As expected, there was immediate and irreparable damage inflicted upon innocent third parties, including the Petitioners and all others similarly situated. Within forty-eight hours of the SEC’s declaration that all XRPs constitute illegal unregistered securities; the following happened:

- a.) XRP was immediately delisted from 54 exchanges, while other exchanges halted the product entirely;

- b.) Bitstamp, on December 25, 2020, informed the public that XRP trading and deposits will be halted to all US customers on January 8th, 2021;
- c.) Simplex stated it began blocking XRP transactions as a result of the SEC lawsuit;
- d.) Bitwise, a Cryptocurrency Index Fund, liquidated all its XRP holdings in its publicly traded fund within hours of the SEC enforcement action;
- e.) Bittrue no longer offers XRP purchases using credit cards for users in the U.S.;
- f.) Posts were made on Twitter from XRP holders saying their life savings has lost 80% and they may suffer total economic losses;
- g.) Financial source companies like ITrustCapital allow IRAs to switch from Fiat into Crypto including XRP, and innocent investors saw their retirement savings practically wiped out;
- h.) There are discussions on Twitter of people questioning whether they should just commit suicide because of the financial damage inflicted by XRP's loss of value;
- i.) Coinbase has decided to suspend all XRP trading effective January 19, 2021;
- j.) B2C2 says it will stop XRP trading;
- k.) Crypto.com has stated it will delist XRP effective January 19, 2021;
- l.) There is no question that all exchanged doing business in the United States is going to follow suit and not run the risk of being charged with selling illegal securities; and,

m.) XRP's value has been cut by 75%, at the time of this Petition and is likely to fall further, costing billions of dollars in losses for innocent investors that have absolutely no connection to Ripple or its executives, including significant economic losses incurred by the named Petitioners and all others similarly situated.

62. Exactly what Chairman Grundfest warned Clayton would happen from the mere filing of the enforcement action declaring XRP a security – did happen. Innocent investors, including the named Petitioners and all others similarly situated, lost multi-millions, if not, billions in USD.

63. In previous enforcement actions like the 2017 ICO prosecutions, the SEC limited its enforcement allegations to the Company itself and its Executives and their distributions of the Digital Asset. Never before, has the SEC claimed that the Digital Asset in the wallets of individual investors, who did not purchase directly from the company or its executives, are securities. It appears to the Petitioners, that the Ripple/XRP enforcement action is not truly limited to one company and a couple of potential bad actors. The Respondent in this action could have, as they have done in the past, targeted specific distributions of XRP, especially in the early days of 2013 through 2015. Any colorable claim or argument that XRP constitutes an unregistered security could **only** be made in those very early days and distributions. The SEC could have targeted those early Ripple distributions and any individual sales by its executives without attempting absurdity by calling the XRP in the Petitioners' wallets unregistered securities. It is an attempt at futility to argue that **Today's XRP** is a security. It's not just legally wrong and intellectually dishonest, but it is absurd to call the XRP held by thousands of innocent investors, who have absolutely no connection to Ripple or its executives' securities.

Not SEVEN PLUS years after the Digital Asset XRP has been publicly traded on more than 200 exchanges worldwide. Many XRP holders, including some of the named Petitioners, have never even heard of Ripple, Garlinghouse, or Larsen.

64. This enforcement action, directed by Clayton, against XRP, is much more to do about other things than whether XRP constitutes a security. In the accompanying *Memorandum of Support* the Plaintiffs provide the Court alternative theories exposing viable motives as to why Clayton would file the most significant SEC enforcement action in modern history.

65. It is possible that the SEC filed the most aggressive Complaint possible in order to drive a settlement. It is possible that the SEC is unclear how digital currencies fit into the Howey framework and are engaging in regulation by enforcement. Interestingly, Respondent is the new SEC Chairman and has publicly been critical of this regulation by enforcement practice. Chairman Roisman has publicly cautioned against regulation by enforcement. He has stated that he “always analyzes on a case by case basis with **investor welfare** as his North Star.” (emphasis added). He stated, “when considering market participants acting in good faith to comply with the rules, enforcement should be the last resort, not a first resort.”

66. Exchanges, however, faced with the SEC’s claim that today’s XRP is a security, must take action and delist, halt and/or suspend all activity related to XRP in the United States. As stated, BITWISE has liquidated all of its XRP. Grayscale Investments manages an XRP Trust for accredited investors. It may liquidate as well. Coinbase, arguably, the most significant exchange in the United States (if not the world) has indicated it will suspend all XRP activity on January 19, 2021. As stated earlier, many others have also delisted or suspended XRP trading. In short, the mere allegation by the SEC that XRP is a security, will likely render XRP

untradeable in the United States and its value would, in effect, for U.S. customers become zero, wiping out many innocent investors with absolutely no connection to Ripple or its executives.

67. The Petitioners will demonstrate however, that the XRP being traded today in 2020 is in no way even close to be a security. Clayton knows that. Otherwise, he would have filed the enforcement action years ago.

68. Clayton was well aware that the mere filing of the enforcement action, not limited to specific distributions of XRP directly from Ripple, but alleging that all XRP constitutes securities, could prove to be a kill shot against Ripple and XRP. Common sense, itself, informs one of that matter. But, here, Clayton received a letter from a former SEC Chairman pleading with him not to cause the harm he would cause to innocent investors with no connection to Ripple. Chairman Grundsfest even stated that filing an action causing multi-billion dollars in losses to investors when no exigency exists to do so, would cause one to question Clayton's discretion. XRP traded for SEVEN years, including several years while Jay Clayton was SEC chairman. Waiting for feedback from the new chairman and new administration would cause no harm. But, filing this action against XRP would cause "**unprecedented damage.**"

69. The SEC complaint against Ripple and XRP, declaring that XRP was, always has been, and continues to be, a security is likely the most far-reaching, outrageous and absurd claim the SEC has ever alleged.

70. Here, the SEC, at Clayton's direction, is alleging that XRP today, SEVEN YEARS, including the XRP owned by the named Petitioners and all others similarly situated, constitute unregistered securities. The SEC is actually alleging that the XRP that sits in individual accounts on Coinbase, Kraken, Binance, Uphold, or in individual investor digital wallets, etc. are illegal securities - even if XRP holders have never heard of Ripple,

Garlinghouse, or Larsen. This broad, sweeping claim is why entities, such as Bitwise, liquidated all of its XRP. This overly broad, reckless, and absurd allegation by the SEC is why Chairman Grundfest wrote to Clayton warning him that there would be an “exodus of intermediary market service providers. Clayton and the SEC cannot claim that the extreme reaction by the marketplace was unforeseeable. *They knew these exact consequences would result wiping billions of dollars in innocent investor wealth.* The SEC and Clayton not only DID NOT protect the investors they swore an oath to protect, but they *intentionally caused catastrophic economic losses to those investors*, during a Global Pandemic, nonetheless.

71. Chairman Grundfest stated in no uncertain terms that if the SEC imposes “security law obligations on XRP while leaving Ethereum untouched” then this “**raises fundamental fairness questions about the exercise of commission discretion.**” (emphasis added). Chairman Grundfest recognized that this move by the SEC against XRP made no legal sense and called Clayton’s motives into question.

72. It is widely known both in the cryptocurrency community and the Government that Clayton is perceived to be anti-crypto. President Trump has stated that he does not favor Bitcoin or crypto assets. Secretary Steven Mnuchin has stated similar beliefs. Former National Security Advisor John Bolton has publicly stated that he was present when he heard President Trump instruct Treasury Secretary Steven Mnuchin “to go after Bitcoin.” In the accompanying *Memorandum of Support* the Petitioners demonstrate how this SEC enforcement action may be targeting the cryptocurrency industry and even its potential impact on BTC.

73. Ripple and its executives, especially Larsen, Garlinghouse, and General Counsel Stuart Alderoty have been very critical of the Trump Administration and of Clayton in his role as Chairman of the SEC.

74. In fact, the tension between Ripple, Clayton and the Trump Administration became public in 2019-2020. Prior to that, Garlinghouse along with the CTO of Ripple met with Clayton and Trump's senior officials at the White House. Afterwards, Ripple's general counsel stated publicly that the U.S. is dangerously close to losing the global edge in crypto and Blockchain technology to China.

75. Larsen repeatedly argued that the U.S. isn't winning the technological Cold War against China. Larsen repeatedly argued that China and Asian mining related to BTC and ETH constitutes for 80% of total mining, and the U.S. Government's inaction is losing the war and suppressing American innovation.

76. Garlinghouse went on national television, including CNBC and Fox Business and openly threatens to relocate Ripple outside of the United States because of the Trump Administration's continued lack of regulatory clarity. Garlinghouse on Fox, nonetheless, states that the Trump Administration and Clayton are favoring China and suppressing American innovation by providing regulatory clarity to ETH and BTC, which are controlled and subsidized by the Chinese Communist Party.

77. Ripple and its executives and/or lobbyist were effective in getting significant and powerful politicians to question Clayton's performance. Senator Mike Crapo wrote a letter to both the OCC and SEC seeking clarity regarding crypto payments. Senator Crapo stated that the different Government agencies need clear rules that do not stifle innovation.

78. Weeks prior to the SEC enforcement action against Ripple a number of U.S. Congressman signed a letter to the SEC asking for regulatory clarity related to Digital Assets, including XRP.

79. Ripple's efforts continued to place political pressure on Clayton. The Washington Examiner publicized an investigative piece on the issue of the Trump Administration and Clayton losing the Blockchain technology war to China because the SEC would not provide clarity. An article was published stating that cryptocurrency is at the forefront of not just finance but even national security. The article stated that the U.S. Intelligence Community is raising concerns about the Chinese Communist Party's (CCP) influence over digital currencies with the SEC. The Director of National Intelligence, John Ratcliffe, wrote a letter directed at Clayton in early November 2020 stating that "crypto, CBDCs and e-cash are all being drawn into a multi-front global competition against Beijing for leadership of the world's economy." He informed Clayton that experts and industry leaders (Ripple) are worried that China is leaving the U.S. behind in the digital-currency race.

80. Director Ratcliffe pointed to concerns the U.S. has regarding China's sway over digital currencies as more than half of the world's crypto mining operations are located in China. He warned Clayton that the Chinese Government has created its own state-controlled digital currency that would make it tough for the U.S. based companies (Ripple) and innovators to compete. Ratcliffe offered to have the senior economic intelligence officers brief Clayton on the matter.

81. Senator Tom Cotton's forwarded, at least two, letters to Clayton calling into question his leadership. His second letter in July 2020 to the Clayton also included Director Ratcliffe and White House National Security Advisor O'Brien lamenting how "so far, the SEC has concluded that only two Digital Assets can be considered non-securities—Chinese controlled Bitcoin and Ethereum." Cotton was making the same argument that Ripple and its executives have been making since 2017: *that the SEC has provided regulatory clarity for BTC*

and ETH but not XRP, thereby favoring China over the United States' own innovation. Ripple's claim that the SEC needs to provide regulatory clarity and that BTC and ETH favor Chinese companies over U.S. companies was being made by Congressmen, National Security Advisors, Senior Intelligence Officers and U.S. Senators. And they all were directing their criticisms to one agency and its Chairman: Clayton and the SEC. This Political pressure on the SEC and Clayton was intense and no doubt initiated by Ripple. As stated earlier, Clayton was not only questioned about Ripple and/or XRP by politicians and Government agents, but also interviewed by business television reporters on CNBC and Fox as well as by participants attending FinTech Conferences. In all settings, Clayton was always questioned directly about XRP. For almost three years, Clayton was continuously asked by multiple parties the same question: *Will the SEC make official statements and declarations that XRP, like BTC and ETH are not securities?* For three years, Clayton gave the same response which was that the "SEC will not comment on a specific product" - even though the SEC had previously provided comment of specific products in BTC and ETH. Clayton always replied by vaguely saying "If it's a security, we will regulate it."

82. Senator Cotton argued that the "continued lack of regulatory clarity not only hurts U.S. developed Digital Assets, but it puts American national and economic security at risk." Clayton and the SEC refused to even address these concerns raised by prominent leaders of the United States Government as it related to the Digital Asset XRP. Despite these national and economic security risks, the Clayton and the SEC remained silent for another five months until they decided that they would provide that regulatory clarity via an enforcement action.

83. Possibly the worst thing that Ripple executives could do after publicly alleging the Trump Administration and Clayton were favoring Chinese technology over American

innovation, was to also publicly congratulate President-Elect Joe Biden. Moreover, the Ripple executives stated that they believe the Biden Administration would be better for the digital currency industry than the Trump Administration. In fact, Garlinghouse publicly stated, that from his perspective, the Biden Administration had to be better than Trumps because Ripple couldn't imagine the regulatory environment being any worse than the current one.

Unfortunately, Clayton proved Garlinghouse wrong and provided him with a real non-imagined worse environment.

84. After SEVEN PLUS years of allowing XRP to be openly sold on multiple U.S. exchanges; after allowing XRP to be held in Crypto Index Funds and brokerage Trust Accounts; after approving Ripple's purchase of a minority stake in MGI, knowing that XRP would be promoted and utilized; after XRP was declared a virtual currency by the DOJ FinCen in 2015; after being informed by Ripple in May 2020 that Ripple would be selling more XRP to institutions and not stopping it; after years of being continuously questioned about whether XRP would get the same non-security status as BTC and ETH; and, after intense political pressure; knowing that the opposition party is assuming control of the SEC in less than 30 days; after being warned by a former SEC Chairman that he should not file an action; *Clayton directed the most significant SEC enforcement action in modern history* to be filed against Ripple, its executives, and XRP, the third largest Cryptocurrency, claiming all XRP as unregistered securities and causing billions in losses to innocent investors with no connection to Ripple. Then, the next day, Clayton left the SEC forever.

85. The only logical explanation for why the SEC would allege that XRP continues today to be a security is to force a settlement. It is an often-common tactic for a prosecutor to overcharge a defendant in an effort to cause panic and/or fear and/or force a settlement/plea.

86. If the SEC wanted to hold these two executives liable, it could have done so, separately, by alleging specific distributions made by them personally at specific periods of time, constituted securities. But, as demonstrated, XRP, itself, today, is not a security. According to the SEC complaint, the parties entered into statute of limitations tolling agreements. Therefore, the parties discussed a potential resolution or settlement. This statement is corroborated by Garlinghouse in his letter to Ripple employees when he states that he and Larsen could have settled separately but chose to fight the charges. Clearly, a pre-filing settlement was out of the question. Thus, the SEC possibly employed a kitchen sink approach to the charges and threw everything in (including the kitchen sink). Simply put, the SEC filed the most aggressive complaint they possibly could in order to inflict the greatest harm they could in order to bully or coerce a party to settle.

87. It is so clear that the SEC lacks good faith to claim that present day XRP (the XRP held by Petitioners) are securities that it is likely that Summary Judgement will be granted on the issue. Quite frankly, it is legally incorrect, intellectually dishonest and completely disingenuous for any SEC lawyer to stand up in open court and claim that all XRPs are securities. If the SEC attempted to make that argument, it would be laughable, if the economic damage that has been done wasn't so tragic.

88. Another explanation for the SEC complaint against XRP is that the SEC is confused as to how digital currencies “fit” in the regulatory framework. As stated, the new Chairman of the SEC, Elad Roisman, has publicly denounced this approach. At SEC Speaks 2020, Mr. Roisman stated “we should not use our enforcement powers to promulgate and **set new legal standards.**” (emphasis added). Chairman Roisman expressed concern that regulation by enforcement can undermine the rule making process in the Administrative Procedure Act,

which provides for public comment.” (emphasis added). Former SEC Chairman Grundfest warned Clayton not to file the enforcement action and cause such damage when no exigency existed. Not only did Clayton, unlike Chairman Roisman, encourage public comment, Clayton wouldn’t allow for comment by the incoming administration that was assuming control in less than 30 days.

89. Respondents have a duty to amend its complaint against Ripple to exclude present day XRP, purchased by investors with no connection to Ripple or its executives. The claim that the XPR owned by Petitioners constitute securities has no good faith basis under the law and facts to make such a claim. Pursuant to the SEC’s mandate, it has a fiduciary duty to protect innocent third-party investors. Failure to amend the SEC’s complaint not only fails to protect investors but actually harms investors.

90. Petitioners are incorporating herein by reference Petitioners Memorandum of Support, which provide clear proof well beyond a preponderance of evidence that today’s XRP IS NOT a security.

JURISDICTION AND VENUE

91. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1361, which provides district courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

92. Venue is proper pursuant to 28 U.S.C. 1391(e) as Respondents are officers or employees of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States.

PARTIES

93. The Petitioners and those similarly situated, are owners of XRP prior to the SEC's enforcement action alleging present-day XRP as securities and were economically harmed by Clayton's and the SEC's conduct.

94. Petitioner John Deaton is an individual more than 18 years old, is a citizen of the United States and a resident of Rhode Island, residing at 211 Rumstick Road Barrington R.I. 02806.

95. Petitioner Jordan Deaton is an individual more than 18 years old, is a citizen of the United States and a resident of Rhode Island residing at 211 Rumstick Road Barrington, R.I. 02806.

96. Petitioner James LaMonte is an individual more than 18 years old, is a citizen of the United States and a resident of the Commonwealth of Massachusetts, residing at 188 Cross Street Seekonk, Ma 02771.

97. Petitioner Tyler LaMonte is an individual more than 18 years old, is a citizen of the United States and a resident of the Commonwealth of Massachusetts, residing at 188 Cross Street Seekonk, Ma 02771.

98. Petitioner Mya LaMonte is an individual more than 18 years old, is a citizen of the United States and a resident of the Commonwealth of Massachusetts, residing at 188 Cross Street Seekonk, Ma 02771.

99. Petitioner Mitchell McKenna is an individual more than 18 years old, is a citizen of the United States and a resident of California, residing at 11007 Harstook Street North Hollywood, California 91601.

100. Petitioner Kristiana Warner is an individual more than 18 years old, is a citizen of the United States and a resident of Rhode Island residing at 211 Rumstick Road Barrington, R.I. 02806.

101. Respondent Securities and Exchange Commission is an agency of the United States Government, headquartered in Washington, D.C.

102. Respondent Elad Roisman is the Acting Chairman of the Securities and Exchange Commission, headquartered in Washington, D.C.

PRAYER FOR RELIEF

Petitioners, on behalf of themselves and members of the class, seeks relief from this Court as follows:

a) The Petitioners seek immediate relief requesting the Court order Respondents to amend its complaint against Ripple to exclude the claim that the XPR owned by Petitioners constitute securities.

b) For an Order certifying that the action may be maintained as a class action, certifying Petitioners as representative of the Class, and designating the undersigned counsel as lead counsel for the Class;

c) For an award of equitable relief as follows:

1) Imposing a constructive trust for any funds awarded against Respondent on behalf of the class;

2) If the SEC receives any funds from a settlement or verdict with Ripple Labs, Brad Garlinghouse and/or Chris Larsen, including but not limited to funds

from a penalty, civil fine, interests, disgorgement, or any other funds, those funds will go into the constructive trust;

- d) For actual damages to be determined at trial;
- e) For reasonable attorney's fees;
- f) For an award of costs;
- g) For any other relief the Court might deem just, appropriate, or proper; and,
- h) For pre and post-judgement interest on any amounts awarded.

There is no other remedy available to the Petitioners. All major U.S. exchanges have indicated that they will either delist or suspend all XRP trading effective January 19, 2021. Once these exchanges delist and other suspend all XRP activity, the XPR owned by Petitioners will become untradeable and thus lose all value and become useless.

Respectfully Submitted,
By the Petitioners,
Through their attorney,

/s/ John E. Deaton

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of January, 2021, I electronically filed the foregoing documents and that they are available for viewing and downloading from the Court's CM/ECF system. I further certify that a copy of the foregoing documents were mailed via U.S. Mail to the Respondents listed below:

Acting Chairman Elad L. Roisman
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549
(202) 551-2700
CommissionerRoisman@sec.gov

/s/ John Deaton

John Deaton